

## LABOUR DEPARTMENT

The 8th November, 1978

No. 11(112)-3 Lab-78/9373.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad. In respect of the dispute between the workmen and the management of M/s. A. K. Packaging, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Application No. 2 of 1977 under section 33-A of the Industrial Disputes Act, 1947.

*Between*

SHRI BRIJ RAMAN AGGARWAL WORKMAN AND THE MANAGEMENT OF M/S. A. K. PACKAGING, MATHURA ROAD, FARIDABAD.

*Present:*—Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the management.

## AWARD

The complainant moved this complaint under section 33-A of the Industrial Disputes Act, complaining contravention of section 33(2)(b) by the management as the management dismissed him on 2nd February, 1977 while a regular dispute was pending.

Notices of the application was sent to the respondent management, who appeared and filed written statement. From the pleadings of the parties, the following issues were framed on 25th June, 1977.

- (1) Whether the applicant was in the employment of the management at the time the reference was pending and at the time this complaint was made or at any time ?
- (2) Whether the management has dismissed the workman concerned ?

(3) Whether the management has contravened the provisions of section 33 of the I. D. Act ? If so, to what effect ?

(4) Relief ?

The case was fixed for the evidence of the workman. The workman examined himself as W.W. 1 and stated that he was in the employment of this management since year 1973 and the management dismissed him on 2nd February, 1977 orally. He was neither served with one month notice nor was paid wages in lieu thereof and at that time a reference involving general demands of the workman was pending. The number of the reference is 141 of 1976 as given in the complaint. The pendency of the regular reference was admitted by the respondent management in his written statement. The workman proved several documents. The representative for the complainant closed his case.

Then the case was fixed for the evidence of the respondent management who examined one Shri Ramesh Kumar Khunger, their Factory Manager as M.W. 1. M.W. 1 stated that complainant was in their employment but was an employee of M/s. Ahuja Kaship Limited, whose building and machinery they have taken on lease. He further stated that the workman was getting wages from them. He admitted that the management was issuing things and articles from their stores needed for repair to the workman. He then stated that Misses Kusam Ahuja and B. L. Ahuja were the partners of this concern and this management was contractors of M/s. Hindustan Milk Food. In cross-examination he stated that no other employee of M/s. Ahuja Kaship were working in their factory. They admitted that the complainant was working in their factory for the last 2/3 years but they never marked his presence in the factory. They used to tell M/s. Ahuja Kaship, the work they needed and they sent the man. He admitted that Ex. W-1 and W-2 to W-38 bore his signatures. The management closed their case.

Then arguments were heard. On the date of arguments Shri Darshan Singh the representative for the workman did not appear. The representative for the management Shri R. C. Sharma argued for the management. I have gone through all the evidence oral as well as documentary. I now give my finding issuewise.

## ISSUE No. 1

The workman has proved 38 documents which belong to the management. They are printed forms such as stores requisition slips etc., etc. Ex. W-1 is the certificate from the management in respect of the complainant that the complainant was their employee. The certificate is an admission of the management that the complainant was in their employment. The management can not get out of their own admission. I, therefore, decide issue No. 1 in favour of the workman.

## ISSUE No. 2

Although the management pleaded that the workman was not their employee but when I have found that the workman was their employee and the workman states that the management dismissed him. I decide Issue No. 2 in favour of the workman.

## ISSUE No. 3

The regular reference was pending which is in the admission of the management respondent. During pendency of that reference the management dismissed the complainant and they have not obtained approval from this Tribunal under section 33(2) (b) in respect of the above said dismissal of the workman. The management have contravened the provisions of section 33 of the Industrial Disputes Act. I, therefore, decide this issue in favour of the workmen.

## ISSUE No. 4 (Relief)

The complainant workman is entitled to reinstatement with continuity of service and with full back wages, and I order accordingly and set aside the dismissal of the workman.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated the 12th October, 1978.

Endorsement No. 945, dated the 20th October, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment

Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 11(112)3 Lab.-78/9461.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workmen and the management of M/s. Hindustan Brown Boveri Ltd., P. B. No. 16, Industrial Area, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 134 of 1975.

Between

SHRI DHARAM PAL WORKMAN AND THE  
MANAGEMENT OF M/S. HINDUSTAN BROWN  
BOVERI LIMITED, POST BOX No. 16,  
INDUSTRIAL AREA, FARIDABAD.

Present:—Shri Darshan Singh, for workman.

Shri K. K. Khuller, for the management.

AWARD

By order No. ID/FD/75/52354 dated 27th July, 1975 the Governor of Haryana, referred the following dispute between the management of M/s. Hindustan Brown Boveri Limited, Post Box No. 16, Industrial Area, Faridabad and its workman Shri Dharam Pal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Dharam Pal was justified and in order?  
If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared

and filed their pleadings. From the pleadings of the parties, the following issues were framed by my learned predecessor on 8th October, 1975.

- (1) Whether the workman lost his lien on service as a result of continued absence under the certified standing orders governing his conditions of service ?
- (2) If yes, whether the reference is bad in law as being not covered under section 2-A of the Industrial Disputes Act, 1947 ?
- (3) In case of non-proof of issue No. 1 whether the termination of services of the workman is justified ?
- (4) If not, to what relief is the workman entitled ?

The case was fixed for the evidence of the management. The management examined Shri G. C. Jain, their Executive Assistant as M.W. 1 and closed their case.

Then the case was fixed for the evidence of the workman. The workman examined Shri Arjan Singh, President, Hindustan Electric Workers Union as W.W. 1, himself as W.W. 2 and Shri Nanak Singh Tyagi, Supervisor, of the factory of the management W.W. 3 and close his case.

Then the case was fixed for arguments. Arguments were heard. I have gone through all evidence oral as well as documentary and have heard the arguments of the parties. I now give my findings issuewise.

#### ISSUE No. 1 :

M.W. 1 has proved some documents Ex. M-1 to M-22 and has stated that the workman was warned 3/4 times. He also proved the charge-sheet. He further stated that the management did not see any application for grant of leave from 23rd December, 1974 onwards and the management did not receive reply of letter Ex. M-14 and M-15. Ex. M-14 is a letter from the management to the workman reading that the workman was absent from 23rd December, 1974 without any authorised leave and asking the workman to report for duty. This letter is dated 27th December, 1974. The letter further reads that if the workman does not report for duty by 31st December, 1974, the management shall presume that

the workman was no longer interested in employment and shall be deemed to have left the service of his own accord. This letter was sent by registered A.D. Ex. M-17 which was returned by the post office with the remarks that the addressee left without address. Similar is Ex. M-15 which was also sent,—vide registered A.D., this is dated 2/4th January, 1975. This letter reads that the workman was advised to report for duty by 31st December, 1974 but he did not report for duty and has remained absent without authorised leave since 23rd December, 1974. This letter further reads that the workman was deemed to have left the service of the company of his own accord from the date of his absence as he remained absent without authorised leave for more than consecutive days and the management has struck off his name from the rolls as per the certified standing orders. M.W. 1 further stated that he was employed first of all as a Mali and then was promoted as an Assembler in the year 1970. He admitted the receipt of demand notice Ex. W-1 to W-3. He admitted his signatures and of Shri Daljit Singh, Nanak Singh Tyagi and Arjan Singh on Ex. W-4 to W-8 and stated that these documents were prepared by him as an enquiry officer while holding enquiry against Shri Nanak Singh Tyagi Supervisor. He further stated in cross-examination that no medical certificate was received from the workman after 23rd December, 1974. The representative for the management tendered in evidence documents Ex. M-24 to M-25.

W.W. 1 Shri Arjan Singh, President of the union stated that Ex. W-2 bore the signatures of Shri K. C. Sharma, the General Secretary of the union. He had gone with the workman to the management requesting them to take the workman on duty but the management refused to take him back on duty, and on his advice the workman gave the demand notice. He also brought a carbon copy of enquiry proceedings against Shri Nanak Singh Tyagi. In cross-examination this witness admitted that the enquiry against Shri Nanak Singh Tyagi was held after the service of this workman Shri Dharam Pal has come to an end and that even the charge-sheet was also given to Shri Nanak Singh Tyagi after the service of this workman had come to an end. He denied a suggestion that his evidence to the effect that he had accompanied the workman to the management requesting the management to take the workman on duty was an after thought. He admitted that the workman resided at Nacholi, Post Office Kheri Kalah and Shri N. S. Tyagi resided

at Faridabad. The resident of the workman concerned has some importance as the management had sent their letters Ex. M-14 and M-15 at this address admitted by W. W. 1. W.W. 2 the workman concerned stated that he had fallen sick on 23rd December, 1974 at Shahdra Delhi and he had sent an application to that effect to the management by registered post. He further stated that he had mentioned in the application that he be granted leave till he remained sick and that he had sent medical certificate together with that application on 24th December, 1974, again said that he had actually sent the copy of the medical certificate, the original was with him and he produce the same Ex. W-10 in this court on 10th November, 1976 at the time when he was being examined as W.W. 2. He then stated that when he sent his application, he went to the post office and the post office granted him a receipt Ex. W-11. He also produced in his examination-in-chief a fitness certificate Ex. W-12. He further stated that he went to the factory for joining duty on 13th January, 1975 and the management refused to take him on duty. He further stated that the management had told him that he gave them no information whatsoever of any kind and therefore they would not take him on duty as he was absent. He further stated that he had shown his fitness certificate to the management. He admitted in cross-examination that he used to live in village Nacholi, Post Office Kheri Klan and that he had performed his duty on 22nd December, 1974 upto 2.30 p.m. and thereafter he continued to perform his duty upto 11 p.m. He asked the management to pay him over time but they refused and asked him that he had to work upto 11 p.m. and that he should resign. He denied a suggestion that he had stated a concocted story about over time and resignation. He further admitted in cross-examination that he did not make any complaint to the union or any other person that he was behaved like that. He further stated that on 22nd December, 1974 his brother-in-law had come to take his wife to their house. He admitted that the date 23rd December, 1974 was the day of payment of bonus. He had stayed in the office of the union on the night between 22nd December, 1974 and 23rd December, 1974 where his brother-in-law and wife reached and they accompanied him to the premises of the management where he refused bonus amount and then they advised him to go to Shahdra for treatment and, therefore, he went there. He admitted that whenever any workman

fell sick he went to the E.S.I. dispensary or B. K. Hospital at Faridabad. In cross-examination he stated that Ex. W-10 is not the certificate that the doctor had granted to him and that he had sent the certificate to the management. He further stated in cross-examination that the clerk of the Doctor issuing Ex. W-12 altered the date of its issue telling him that he had to go on duty on 13th January, 1975 and hence he altered it to 13th January, 1975. He further stated that he himself had not sent Ex. W-10 on 24th December, 1974. He admitted in cross-examination that Dr. R. B. Gupta, the issuing authority of Ex. W-12 was alive. He did not inform the E.S.I. Authority that he had fallen sick and had taken the treatment from Dr. R. B. Gupta. He admitted that he knew it well that the E.S.I. Authorities pay him when he inform them about his treatment that he received elsewhere. He then stated that Shri Anar Singh, the relative of his, had gone to the post office and had sent his application by registered post together with medical certificate and that he had not gone to the post office. He did not keep the copy of that application with him as he was unconscious there. He further stated in cross-examination that Ex. W-10 is the duplicate which he got later on from Dr. R. B. Gupta after the management had refused to take him back on duty and that he had not compared Ex. W-10 with the original that he had sent to the management. He did not know English. He further stated that on 13th January, 1975 he had gone to the Personnel Officer of the management named Shri Parmar who was not in the employment of the management on the day he made the statement. On 10th November, 1976 the representative for the workman prayed for adjournment that he wanted to examine Dr. R. B. Gupta and Shri N. S. Tyagi as a witness for the workman. The workman examined Shri Nanak Singh Tyagi the Supervisor as W.W. 3 but did not examine Dr. R. B. Gupta after obtaining 5/6 adjournments.

W.W. 3 Shri Nanak Singh Tyagi stated that the workman had fallen ill in December, 1974 and his application was received and that he had given his statement as a witness in a domestic enquiry against him by the management. He owned the portion 'A' to 'A' of his said statement. He further stated that the Production Superintendent had given him oral instructions not to enter and put up the application of the workman. He further stated that some officers were having a grudge

against the workman as the workman was working as a Mali in the Kothi of Technical Manager Shri V. D. Arande and were giving him information regarding inefficient working and slow working of some workmen and that Shri Arande had left. In cross-examination he admitted that his service had been terminated about a year ago i.e. near about the month November or December, 1976. He admitted that he was charge-sheeted in June, 1976,—vide charge-sheet Ex. M-26 and Shri Arjan Singh was representing him in the domestic enquiry. Shri Arjan Singh was the President of M/s. Hindustan Brown Boveri Electric Workers Union and the said union was conducting this case of Shri Dharam Pal, the workman concerned. He further stated that he had told the union about the occurrence relating to Shri Dharam Pal prior to he made the said statement in portion 'A' to 'A'. He further stated in cross-examination that he sent the application of the workman without entering it. He stated that first application of Shri Dharam Pal was received on 22nd/23rd December, 1974 and that he did not remember its date. He could not tell the period of medical leave mentioned in the application. He further stated that 7 days after that, another application of the workman concerned was received on medical ground with medical certificate which was given to him at the gate of the factory by some person, knowing to him by face but not by name, he was outsider. This application was also dealt with in the same manner. He stated that the oral instructions of the Production Superintendent was given to him two days after the absence of the workman concerned commenced. He further admitted in cross-examination that Shri Arande had left the factory about six months or a year prior to determination of service of Shri Darshan Pal. He stated that when Shri Sohal the Production Superintendent give him the said oral instructions, none was present. He could not tell as to how many or any application of Shri Dharam Pal was received in the month of November, 1974. He remembered about these applications on medical ground only, as they were relevant. He admitted in cross-examination that other applications were registered and these were not registered, hence he remembered. He further stated that the production manager and the production superintendent were against Shri Dharam Pal as he had made complaints against them to Shri Arande orally and that Shri Arande had instructed other officers to give instructions to Shri Dharam Pal

for conveying them to him and that these instructions were given 5 years back to the termination of services of Shri Dharam Pal. The evidence of the workman is not reliable. The evidence of W.W. 1 is of no bearing. He had accompanied the workman to the management for taking him on duty. This is a matter after occurrence. He has also stated that the workman gave the demand notice on his advise and that Shri Tyagi was charge-sheeted after the service of Shri Dharam Pal has come to an end. The evidence of W.W. 2 Shri Dharam Pal, the workman concerned, is also of no credence. According to him he had fallen sick on 23rd December, 1974 at Shahdra Delhi whereas in cross-examination he stated that on the night between 22nd December, 1974 and 23rd December, 1974 he was in the office of the union, he received bonus on 23rd December, 1974 and his brother-in-law and wife were present and they asked him to go to Shahdra for treatment. His statement is contradictory also. He stated that he sent the application together with medical certificate on 24th December, 1974. Again said he had sent the copy of the medical certificate and the original was with him, and he produced the same in his examination-in-chief which is Ex. W-10. Why then, the original certificate was kept with him and why a copy was sent? And why the said original of Ex. W-10 was produced in his examination-in-chief on 10th November, 1976 when he alleges to have fallen sick on 23rd December, 1974. I have seen Ex. W-10 which is original, it is un-dated. But Ex. W-10 is not proved by the doctor, several adjournments were obtained for examining the doctor but he was not examined. I failed to understand why Ex. W-10 remained with the workman when the workman states that he had sent it and again stated that its copy was sent which is also not proved. I also seen Ex. W-12 the fitness certificate which is also not proved by the doctor. Its date is altered. The workman has stated that he had sent the application together with medical certificate by registered post but no postal receipt regarding the registration has been placed on the file, neither there is a copy of the application on this file, the original whereof is alleged by the workman to have been sent by the management. The workman stated that he went to the post office and the post office granted him receipt Ex. W-11. I have seen Ex. W-11, it is not a receipt regarding registration of a letter, it is a certificate of posting which has postal seal at 3 places. Although in these seals the date 24.12 is readable but the year is not readable and

the seal does not even suggest the year as 1974. The defence of the workman is contradictory and full of contradiction. The workman has stated that he had demanded the payment of overtime and then the management asked him to resign. The workman has suggested in his statement that the demand of the payment of overtime was the cause of termination of his service whereas W.W. 3 Nanak Singh Tyagi had stated that the cause was that the workman had complained against the production Manager and Production Superintendent to Shri Arande. When all the applications are registered in the factory why the application of the workman was not registered and Shri Tyagi blamed Shri Sohal the Production Superintendent that he did not register the application on his oral instructions. Neither Shri Arande has been examined but it is stated that he had left the factory but about six months or a year prior to the termination of his service of Shri Dharam Pal. Hence this animous levelled against the management is not proved. Moreover the workman himself has not stated regarding the animous levelled against the management by W.W. 3 Shri N. S. Tyagi. Moreover the services of Shri N. S. Tyagi have also been terminated but about 1½ or 2 years after Shri Dharam Pal absented. It is strange that Shri Dharam Pal received bonus in the factory premises on 23rd December, 1974 and went to Shahdra for treatment. He neither went to the E.S.I. dispensary or the B. K. Hospital Faridabad where usually the workman go for treatment as admitted by him. He himself admitted that the date of fitness certificate has been altered by the clerk of the doctor, but the clerk has not been examined as the doctor has not been examined to prove the medical certificate or the fitness certificate, these documents are of no value. Moreover, the application allegedly accompanied the certificate is also not proved. Then the workman stated that Ex. W-10 the duplicate which he got latter on from the doctor after the management had refused to take him back on duty. Therefore, Ex. W-10 is of no value and help to him as this alleged proof of his sickness had been obtained by him after the management had refused to take him back on duty. Once he stated that Ex. W-10 is the original. Then he stated that Ex. W-10 was a duplicate. Once he stated that he went to the post office himself and then in cross-examination he stated that he had not gone to the post office but has sent his relative named Shri Anar Singh. W.W. 3 Shri Nanak Singh Tyagi has not stated

that the application or medical certificate were received by post. He is stated that he found them on his table and then he stated that another application and the medical certificate were received 7 days afterwards whereas Shri Dharam Pal has no where stated that he sent another application with medical certificate 7 days after that, Shri Dharam Pal stated that he had sent the application together with medical certificate on 24th December, 1974 whereas Shri Nanak Singh Tyagi has stated that he found the first application on 22nd or 23rd December, 1974. The statements of both these witnesses are contradictory to each other and not reliable. Then W.W. 3 Shri N. S. Tyagi has stated that another application with medical certificate was given to him at the gate of the factory by some person, but this is not the case of the workman. He stated that he had sent it by post.

Ex. M-1 is the certified standing orders. Ex. M-2, dated 24th January, 1965, speaks that a workman was irregular in attendance. Ex. M-3, dated 23rd May, 1965, reads that the workman remained absent without permission for more than two occasions and he was warned. To the same effect is Ex. M-4, dated 11th July, 1965, Ex. M-5, also speaks of absence on the part of the workman during 5 months and he was warned three times.

I have gone through all the documents of the management as well as of the workman. The record of service of the workman is not good. By the letters of the management, it is evident that the workman absented many a times in the year 1965, 1966, 1967. Even the workman was found missing on the place of his work on 13th March, 1974. Ex. M-9, dated 23rd/24th October, 1974 also speaks irregular attendance and absence on the part of the workman. Ex. M-21 and M-22 are the extracts of attendance register wherein the workman is shown absent on 14th, 15th, 17th, 18th December, 1974 and thereafter from 23rd December, 1974, till 3rd January, 1975, and according to the workman he went to the factory on 13th January 1975, and not prior to that.

In these circumstances, I do not believe that the workman sent any application or any medical certificate to the management during the period from 23rd December, 1974 to 13th January, 1975. The management sent to the workman two letters Ex. M-14, dated 27th December, 1974 and Ex. M-15,

dated 2nd/4th January, 1975. They were sent at the correct address of the applicant the correctness of the address is admitted by the workman as well as his witness W.W. 1. The management is not at fault. As per clause (G) of Rule 17 of the certified standing orders of the management, the workman is deemed to have left the service of the company without notice. This clause further reads that if the workman offers an explanation within 4 days thereafter to the satisfaction of the Manager, his absence may be converted into leave without pay. This is not the case of the workman and hence the latter part of this clause is not attracted.

The representative for the workman referred the case of D.C.M. Mills reported as 1977-Labour Industrial cases page 1795 and the management cited several ruling given below. The representative for the management has also filed written arguments relying on the above said following rulings.

1960—I—LLJ—548 (S.C.), AIR—1961—Madras—158, AIR—1961—Gujrat—196, 1967—II—LLJ—883 (S.C.), 1977—Labour Industrial cases page 1801, 1977—FLR—page 161, 25—FJR—page 25, 1958—II—LLJ—page 260, 1957—I—LLJ—226, 1977—I—LLN—page 349, 1957—I—LLJ—235 and 243, 1966—II—LLJ—page 59 and more than 20 other rulings.

I have gone through several of these rulings.

The D.C.M. case 1977-Labour Industrial Cases page 1695 does not help the workman. In that case the management had terminated his services and the case did not fall within the standing orders, so their Lordships held that termination as retrenchment, and as retrenchment compensation was not paid, the termination was set-aside. Their Lordships held that such termination (as in that case) amounts to retrenchment. The case of the management did not fall within the standing orders. The act of the management terminating the services of the workman beyond the standing orders is a retrenchment. But here in this case, on facts I have found that the workman remained absent from 23rd December, 1974 to 13th January, 1975 and the standing orders provided that if a workman remained absent for 7 consecutive days or more, he shall be deemed to have left the service of the company. Their Lordships of the Hon'ble of

the Supreme Court have held in several rulings that the standing orders are statutory terms or conditions of service and are abiding. I, therefore, hold that the workman has left the service of the management by remaining absent for more than 7 days as per the standing orders. I, therefore, decide issue No. 1 in favour of the management.

#### ISSUE No. 2 :

As the management has not terminated the services of the workman, the reference does not fall under section 2-A of the Industrial Disputes Act, therefore, the reference is bad in law.

#### ISSUE No. 3 :

This issue arises in case of non-proof of issue No. 1. Issue No. 1 has been proved, hence issue No. 3 has become redundant.

#### ISSUE No. 4 :

The workman is not entitled to any relief, as he himself has lost the service of the management as per certified standing orders of the management.

While answering the reference, I give my award that the workman himself has lost the job as per the certified standing orders of the management and the management has not terminated his services. The workman is not entitled to any relief.

Dated the 20th October, 1978.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 970, dated 23rd October, 1978.

Forwarded, (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.